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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93525; File No. SR-CBOE-2021-029]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment Nos. 2 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to Increase Position Limits for Options on Two Exchange-Traded Funds

November 4, 2021

I. Introduction

On April 21, 2021, Cboe Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Interpretation and Policy .07 of Exchange Rule 8.30, Position Limits, to increase the position limits for options on the following exchange-traded funds (“ETFs”) and exchange-traded note: SPDR Gold Shares (“GLD”), iShares iBoxx \$ Investment Grade Corporate Bond ETF (“LQD”), iShares Silver Trust (“SLV”), iPath S&P 500 VIX Short-Term Futures ETN (“VXX”), ProShares Ultra VIX Short-Term Futures ETF (“UVXY”), and VanEck Vectors Gold Miners ETF (“GDX”).³ The proposed rule change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As noted below, the Exchange subsequently amended its proposal to remove the proposed increases in position limits for options on GLD, SLV, VXX, and UVXY. See infra notes 10-11. As a result, the proposal as amended, and this

was published for comment in the *Federal Register* on May 10, 2021.⁴ On June 17, 2021, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁶ On July 27, 2021, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁷ On August 5, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act⁸ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.⁹ On October 8, 2021, the Exchange submitted Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by

order, address only proposed position limit increases for options on LQD and GDX.

⁴ See Securities Exchange Act Release No. 91767 (May 4, 2021), 86 FR 25026. To date, the Commission has received no comments on the proposed rule change.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 92204, 86 FR 33395 (June 24, 2021). The Commission designated August 8, 2021, as the date by which the Commission was required to approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁷ In Amendment No. 1, the Exchange: (1) reduced the proposed position limit for GLD options from 1,000,000 contracts to 500,000 contracts; and (2) provided additional justification and analysis in support of the proposal. The full text of Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2021-029/srcboe2021029-9094584-246812.pdf>.

⁸ 15 U.S.C. 78s(b)(2)(B).

⁹ See Securities Exchange Act Release No. 92581, 86 FR 44118 (August 11, 2021).

Amendment No. 1.¹⁰ On October 25, 2021, the Exchange submitted Amendment No. 3 to the proposed rule change.¹¹ The Commission is publishing this notice to solicit comment on Amendment Nos. 2 and 3, and is approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment Nos. 1, 2, and 3

Currently, position limits for options on ETFs traded on the Exchange, such as those subject to this proposal, as amended, are determined pursuant to Exchange Rule 8.30, and generally vary according to the number of outstanding shares and past six-month trading volume of the underlying security. Options on the securities with the largest numbers of outstanding shares and trading volume have a standard option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market.¹² In addition, Interpretation and Policy .07 of Exchange Rule 8.30 currently sets forth separate position limits for options on certain ETFs that range from 300,000 to 3.6 million contracts.

¹⁰ In Amendment No. 2, the Exchange: (1) revised its proposal to eliminate its originally proposed increases to position limits for options on VXX and UVXY; (2) provided additional justification and analysis in support of its proposed increases to position limits for options on GLD and SLV; and (3) made technical, corrective, and clarifying changes. The full text of Amendment No. 2 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2021-029/srcboe2021029-9332427-260236.pdf>.

¹¹ In Amendment No. 3, the Exchange revised its proposal to eliminate the proposed increases to position limits for options on GLD and SLV, and stated that it intends separately to propose to increase the position limits for these options. The full text of Amendment No. 3 is available on the Commission's website at: <https://www.sec.gov/comments/sr-cboe-2021-029/srcboe2021029-9352219-261347.pdf>.

¹² See Interpretation and Policy .02(e) to Exchange Rule 8.30.

Options on LQD and GDX are currently subject to the standard position limit of 250,000 contracts as set forth in Exchange Rule 8.30.¹³ The purpose of the proposed rule change, as modified, is to amend Interpretation and Policy .07 to Exchange Rule 8.30 to increase the position limits for options on LQD and GDX from 250,000 contracts to 500,000 contracts.¹⁴ The Exchange believes that the proposed position limit increases will lead to a more liquid and competitive market environment for these options that will benefit customers interested in trading these products.¹⁵ To support the proposed position limit increases, the Exchange has provided statistics regarding: the liquidity of LQD and GDX, as well as the value of these ETFs, their components, and the relevant marketplace; the share volume for LQD and GDX and contract volume for the options on these ETFs; and the trading characteristics of products that the Exchange believes are economically equivalent to LQD and GDX and options thereon.

Specifically, in support of its proposal to increase the position limit for options on GDX from 250,000 contracts to 500,000 contracts, the Exchange, among other things, compares the trading characteristics of GDX to those of the iShares MSCI Brazil Capped ETF (“EWZ”), the iShares 20+ Year Treasury Bond Fund ETF (“TLT”), the iShares MSCI Japan ETF (“EWJ”), and the iShares iBoxx High Yield Corporate Bond Fund (“HYG”), options on all of which currently have a position limit of 500,000 contracts.¹⁶

¹³ See Amendment No. 2, supra note 10, at 6; see also id. at 18-20, for descriptions provided by the Exchange regarding the composition, design, and investment objectives of LQD and GDX.

¹⁴ Pursuant to Exchange Rule 8.42, Interpretation and Policy .02, the text of which is not being amended by this proposal, the exercise limits for LQD and GDX options would be similarly increased as a result of this proposal.

¹⁵ See Amendment No. 2, supra note 10, at 22.

¹⁶ See id. at 9, 20. See also Exchange Rule 8.30, Interpretation and Policy .07.

The Exchange states that the average daily trading volume (“ADV”) in calendar year 2020 for GDX was 39.4 million shares compared to 29.2 million shares for EWZ, 11.5 million shares for TLT, 8.2 million shares for EWJ, and 30.5 million shares for HYG;¹⁷ the total shares outstanding as of April 5, 2021 for GDX was 419.8 million compared to 173.8 million for EWZ, 103.7 million for TLT, 185.3 million for EWJ, and 254.5 million for HYG;¹⁸ and the fund market cap as of January 14, 2021 for GDX was \$16,170.5 million compared to \$6,506.8 million for EWZ, \$17,121.3 million for TLT, \$13,860.7 million for EWJ, and \$24,067.5 million for HYG.¹⁹ The Exchange also states that many of the Brazil-based gold mining constituents included in GDX are also included in EWZ, and that the Exchange has not identified any issues with the continued listing and trading of EWZ options or any adverse market impact on EWZ in connection with the current 500,000 position limit in place for EWZ options.²⁰ Further, the Exchange states that the components of the NYSE Arca Gold Miners Index – the price and yield performance of which GDX seeks to replicate as closely as possible – can be used to create GDX, and currently must each have a market capitalization greater than \$750 million, an ADV of at least 50,000 shares, and an average daily value traded of at least \$1 million in order to be eligible for inclusion in the index.²¹

In support of its proposal to increase the position limit for options on LQD from 250,000 contracts to 500,000 contracts, the Exchange, among other things, compares the

¹⁷ See Amendment No. 2, supra note 10, at 20.

¹⁸ See id. at 9.

¹⁹ See id. at 9, 20.

²⁰ See id. at 20.

²¹ See id. at 20-21.

trading characteristics of LQD to those of EWZ, TLT, and EWJ, options on all of which currently have a position limit of 500,000 contracts.²² The Exchange provides data demonstrating that the ADV in calendar year 2020 for LQD was 14.1 million shares compared to 29.2 million shares for EWZ, 11.5 million shares for TLT, and 8.2 million shares for EWJ;²³ the total shares outstanding as of April 5, 2021 for LQD was 308.1 million compared to 173.8 million for EWZ, 103.7 million for TLT, and 185.3 million for EWJ;²⁴ and the fund market cap as of January 14, 2021 for LQD was \$54,113.7 million compared to \$6,506.8 million for EWZ, \$17,121.3 million for TLT, and \$13,860.7 million for EWJ.²⁵ The Exchange also states that LQD tracks the performance of the Markit iBoxx USD Liquid Investment Grade Index, which is an index designed as a subset of the broader U.S. dollar-denominated corporate bond market and can be used in creating a basket of securities that equates to LQD, and which is comprised of over 8,000 bonds for which the outstanding face value of each must be greater than or equal to \$2 billion.²⁶

The Exchange states that the current position limits for options on LQD and GDX may have impeded the ability of market makers to make markets on the Exchange.²⁷ According to the Exchange, the proposal is designed to encourage liquidity providers to provide additional liquidity to the Exchange and other market participants to shift

²² See id. at 9, 18-19. See also Exchange Rule 8.30, Interpretation and Policy .07.

²³ See Amendment No. 2, supra note 10, at 18.

²⁴ See id. at 9.

²⁵ See id. at 9, 19.

²⁶ See id. at 18-19.

²⁷ See id. at 5.

liquidity from over-the-counter markets onto the Exchange, which, it believes, would enhance the process of price discovery conducted on the Exchange through increased order flow.²⁸ The proposal also would benefit market participants, the Exchange maintains, by providing them with the ability to more effectively execute their trading and hedging activities.²⁹

With regard to the concerns that position limits generally are meant to address, the Exchange represents that the structure of LQD and GDX, the considerable market capitalization of these ETFs and their underlying component securities, and the liquidity of the markets for options on these ETFs and the underlying component securities mitigate concerns regarding potential manipulation of the products and disruption of the underlying markets due to the increased position limits.³⁰ The Exchange also states that the creation and redemption process for an ETF creates a direct link to the underlying components of the ETF and serves to mitigate the potential price impact of the ETF shares that might otherwise result from increased position limits, and that arbitrage activity helps to keep an ETF's price in line with the value of its underlying portfolio.³¹

In addition, the Exchange states that the options reporting requirements of Exchange Rule 8.43 would continue to be applicable to the options subject to this proposal.³² As set forth in Exchange Rule 8.43(a), each Trading Permit Holder ("TPH") must report to the Exchange certain information in relation to any customer who, acting

²⁸ See id. at 5, 25-26.

²⁹ See id. at 5, 25.

³⁰ See id. at 5-6, 26.

³¹ See id. at 21-22.

³² See id. at 22-23.

alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts in any single class of option contracts dealt in on the Exchange.³³ Further, Exchange Rule 8.43(b) requires each TPH (other than an Exchange market-maker or designated primary market-maker)³⁴ that maintains a position in excess of 10,000 non-FLEX equity option contracts on the same side of the market, on behalf of its own account or for the account of a customer, to report to the Exchange information as to whether such positions are hedged, and provide documentation as to how such contracts are hedged.³⁵

The Exchange also represents that the existing surveillance procedures and reporting requirements at the Exchange and other self-regulatory organizations are capable of properly identifying disruptive and/or manipulative trading activity.³⁶ According to the Exchange, its surveillance procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and the underlying products.³⁷ In addition, the Exchange states that its surveillance

³³ The report must include, for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered. See Exchange Rule 8.43(a).

³⁴ According to the Exchange, market-makers (including designated primary market-makers) are exempt from the referenced reporting requirement because market-maker information can be accessed through the Exchange's market surveillance systems. See Amendment No. 2, supra note 10, at 23.

³⁵ See id. at 22-23.

³⁶ See id. at 23.

³⁷ See id. at 23-24.

procedures have been effective for the surveillance of trading in the options subject to this proposal, and will continue to be employed.³⁸

The Exchange further states that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a TPH or its customer may try to maintain an inordinately large unhedged position in the options subject to this proposal.³⁹ Current margin and risk-based haircut methodologies, the Exchange states, serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a TPH must maintain for a large position held by itself or by its customer.⁴⁰ In addition, the Exchange notes that the Commission's net capital rule, Rule 15c3-1 under the Act,⁴¹ imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.⁴²

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴³ In particular, the Commission finds that the proposed rule change, as modified, is consistent with Section

³⁸ See id. at 24 n.39. The Exchange represents that non-U.S. component securities that are not subject to a comprehensive surveillance agreement do not, in the aggregate, represent more than 50% of the weight of LQD or GDX. See id. at 7-8.

³⁹ See id. at 24.

⁴⁰ See id.

⁴¹ 17 CFR 240.15c3-1.

⁴² See Amendment No. 2, supra note 10, at 24.

⁴³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

6(b)(5) of the Act,⁴⁴ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Position and exercise limits serve as a regulatory tool designed to deter manipulative schemes and adverse market impact surrounding the use of options. Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise.⁴⁵ These position and exercise limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate the underlying market so as to benefit the options positions, or that might contribute to disruptions in the underlying market.⁴⁶ In addition, such limits serve to reduce the possibility of disruption in the options market itself, especially in illiquid classes.⁴⁷

Over the years, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits for option products overlying certain ETFs where there is considerable liquidity in both the underlying securities markets and

⁴⁴ 15 U.S.C. 78f(b)(5).

⁴⁵ See, e.g., Securities Exchange Act Release No. 45236 (January 4, 2002), 67 FR 1378 (January 10, 2002) (SR-Amex-2001-42).

⁴⁶ See, e.g., Securities Exchange Act Release No. 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR-CBOE-2002-26).

⁴⁷ See id.

the options markets.⁴⁸ The Commission has been careful to balance two competing concerns when considering proposals by self-regulatory organizations to change position and exercise limits. The Commission has recognized that the limits can be useful to prevent investors from disrupting the market in securities underlying the options.⁴⁹ At the same time, the Commission has determined that limits should not be established in a manner that will unnecessarily discourage participation in the options market by institutions and other investors with substantial hedging needs or prevent specialists and market makers from adequately meeting their obligations to maintain a fair and orderly market.⁵⁰

After careful consideration of the proposal, as modified by Amendment Nos. 1, 2, and 3, the Commission believes that it is reasonable for the Exchange to increase the position and exercise limits for options on LQD and GDX to 500,000 contracts. As noted above, the markets for standardized options on these securities and for the underlying securities have substantial trading volume and liquidity. The Commission believes that this liquidity should reduce the possibility of manipulation and underlying market disruption.

⁴⁸ The Commission's incremental approach to approving changes in position and exercise limits for option products overlying certain ETFs is well-established. See, e.g., Securities Exchange Act Release Nos. 88768 (April 29, 2020), 85 FR 26736 (May 5, 2020) (SR-CBOE-2020-015) (approving increase of position limits for options on certain ETFs and indices); and 82770 (February 23, 2018), 83 FR 8907 (March 1, 2018) (SR-CBOE-2017-057) (approving increase of position limits for options on certain ETFs).

⁴⁹ See Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-97-11).

⁵⁰ See id.

The Commission also has considered the creation and redemption processes for the ETFs subject to the proposal; the existence of an issuer arbitrage mechanism that helps keep each ETF's price in line with the value of its underlying portfolio when overpriced or trading at a discount to the securities on which it is based; and how these processes can serve to mitigate the potential price impact that might otherwise result from increased position limits.⁵¹

In addition, as discussed above, the Exchange believes that current margin and net capital requirements serve to limit the size of positions maintained by any one account.⁵² The Commission agrees that these financial requirements should help to address concerns that a member or its customer may try to maintain an inordinately large unhedged position in the options subject to this proposal and will help to reduce risks if such a position is established.

The Commission also believes that the reporting requirements imposed by Exchange Rule 8.43,⁵³ as well as the Exchange's surveillance procedures, together with those of other self-regulatory organizations,⁵⁴ should help protect against potential manipulation. The Commission expects that the Exchange will continue to monitor trading in the options subject to this proposal for the purpose of discovering and sanctioning manipulative acts and practices, and will reassess the position and exercise limits, if and when appropriate, in light of its findings.

⁵¹ See supra notes 30-31 and accompanying text.

⁵² See supra notes 39-42 and accompanying text.

⁵³ See supra notes 32-35 and accompanying text.

⁵⁴ See supra notes 36-38 and accompanying text.

In sum, given the measures of liquidity for the options subject to this proposal and the underlying securities, the creation and redemption processes and issuer arbitrage mechanisms that exist relating to the underlying instruments, the margin and capital requirements cited above, the Exchange's options reporting requirements, and the Exchange's surveillance procedures and agreements with other markets, the Commission believes that it is consistent with the Act to increase the position and exercise limits to 500,000 contracts for options on LQD and GDX.

IV. Solicitation of Comments on Amendment Nos. 2 and 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2021-029 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2021-029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2021-029, and should be submitted on or before [insert date 21 days from publication in the *Federal Register*].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment Nos. 2 and 3 in the *Federal Register*. The sum effect of these amendments was to eliminate the proposed increases to position limits for options on VXX, UVXY, GLD, and SLV from the proposal, and to make technical, corrective, and clarifying changes. As a result, Amendment Nos. 2 and 3 narrow the scope of the proposal such that it would increase the position limits to 500,000

contracts only for LQD and GDX options – which increases have been subject to a full notice-and-comment period since publication of the original notice – and leave in place the current position limits of 250,000 contracts for options on VXX, UVXY, GLD, and SLV. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁵⁵ to approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵⁶ that the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 (SR-CBOE-2021-029), be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2021-24531 Filed: 11/9/2021 8:45 am; Publication Date: 11/10/2021]

⁵⁵ 15 U.S.C. 78s(b)(2).

⁵⁶ Id.

⁵⁷ 17 CFR 200.30-3(a)(12).